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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 07 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, initially approved the preference visa petition. Upon review of the record, the director subsequently served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and consultation firm. It seeks to employ the beneficiary permanently in the United States as a technical recruiter pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition after issuance of the NOIR, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess an accredited Indian post-graduate diploma.

On appeal, the petitioner submitted additional evidence relating to the purported accreditation of the beneficiary's educational credentials and maintained that the petition should be approved.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).[1]

The procedural history in this case is documented by the record and incorporated. Further elaboration of the procedural history will be made only as necessary.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

[1]The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

The petitioner must establish that its ETA Form 9089 job offer to the beneficiary is realistic. The petitioner must show that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case the priority date is May 7, 2005 as stated on the ETA Form 9089 filed on behalf of the original beneficiary.[2]

On Part 5 of the Immigrant Petition for Alien Worker, Form I-140, which was filed on May 17, 2006, it is indicated that the petitioner was established on January 1, 1996 and employs more than 350 workers.

The petition was approved on October 2, 2006. On September 17, 2008, the director issued a notice of intent to revoke (NOIR). He noted that the Form I-140 filed on May 17, 2006 had not been accompanied by signed copies of Section L and Section N of the ETA Form 9089, which were required when a substitution is sought by the employer. The director also determined that there was no evidence that the beneficiary's post-graduate MBA Programme Certificate from the Mumbai Educational Trust's Asian Management Development Centre was an accredited Indian academic credential because the MET website indicated that it did not offer a PGMBA course.

In response to the director's NOIR, the petitioner submitted the appropriate signed copies of the ETA Form 9089 and the duplicate originals of the beneficiary's post-graduate diploma and accompanying marks sheets. These documents indicate that the originals were seen and returned. The beneficiary has a certificate signifying that she completed a two-year full-time Post Graduate Management and Business Administration Programme (PGMBA) and was awarded the Post Graduate MBA Programme certificate by the Mumbai Educational Trust's (MET's) Asian Management Development Centre on October 30, 1999. A letter dated October 13, 2008 also was provided that was signed by [redacted] Founder Trustee & Vice-Chairman. He confirms that the beneficiary was a student at the MET Asian Management Development Centre and completed

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[2] In this case, the beneficiary is a substitution for the original beneficiary sponsored. DOL amended the administrative regulations at 20 C.F.R. part 656 through a final rulemaking published on May 17, 2007, which took effect on July 16, 2007. *See* 72 Fed. Reg. 27904 (May 17, 2007). The regulation at 20 C.F.R. § 656.11 prohibits the alteration of any formation contained in the labor certification after the labor certification is filed with DOL, to include the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. For individual labor certifications filed with [DOL] prior to March 28, 2005, a new Form ETA 750 (sic), Part B signed by the substituted alien must be included with the preference petition. For individual labor certifications filed with the DOL on or after March 28, 2005, a new ETA Form 9089 signed by the substituted alien must be included with the petition. USCIS will continue to accept Form I-140 petitions that request labor certification substitution that were filed prior to July 16, 2007. As the instant I-140 petition was filed on May 17, 2006, the petitioner's request to substitute its beneficiary was accepted.

the requirements for the Post Graduate MBA programme. [redacted] states that the beneficiary's studies occurred during the academic years from August 1997 to July 1999.

Along with these documents, the petitioner indicated that the beneficiary had left the petitioner's employment and was working for another firm and had filed for "portability" under the American Competitiveness in the Twenty First Century Act of 2000 (AC21).[3]

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[3]Section 204(a)(1)(F) of the Act provides that: "Any employer desiring and intending to employ within the United States an alien entitled to classification under section 1153(b)(1)(B), 1153(b)(1)(C), 1153(b)(2), or 1153(b)(3) of this title may file a petition with the Attorney General for such classification."

Once an alien has an approved petition, section 245(a) of the Act, 8 U.S.C. § 1255, allows the beneficiary to adjust status to an alien lawfully admitted for permanent residence:

> (a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the [Secretary of Homeland Security], in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if
>
> > (1) the alien makes an application for such adjustment,
> >
> > (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
> >
> > (3) an immigrant visa is immediately available to him at the time his application is filed.

It is noted that the pertinent section of AC 21, Section 106(c)(1), amended section 204 of the Act, codified at section 204(j) of the Act, 8 U.S.C. § 1154(j) provides:

> Job Flexibility For Long Delayed Applicants For Adjustment Of Status To Permanent Residence. - A petition under subsection (a)(1)(D) [since redesignated section 204(a)(1)(F)] for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

Section 212(a)(5)(A)(iv) of the Act, 8 U.S.C. § 1182(a)(5)(A)(iv), states further:

> Long Delayed Adjustment Applicants- A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall

On November 19, 2008, the director revoked the approval of the Form I-140. He noted that relevant to the accreditation of the beneficiary's diploma from MET Asian Management Development Centre consideration of it as a foreign equivalent degree, he had reviewed the Electronic Database for

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> remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO V. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

In addition, we are expected to give the words used in the statute their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). We are to construe the language in question in harmony with the thrust of related provisions and with the statute as a whole. *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

Adjustment of status may only be granted "by virtue of a valid visa petition approved in [the alien's] behalf." 8 C.F.R. § 245.1(g)(2). Filing for benefits under AC21 does not make the portability provision relevant to the adjudication of the underlying visa petition. Rather, the statute and regulations prescribe that aliens seeking employment-based preference classification must have an immigrant visa petition approved on their behalf before they are even eligible for adjustment of status. Section 245(a) of the Act, 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1(g)(1), (2). If the director properly revokes the petition, there is no basis of the beneficiary to seek benefits pursuant to AC21. As discussed herein, the AAO finds that the director properly revoked the petition, and that, therefore, that beneficiary would not be eligible for portability.

There is no evidence that Congress intended to confer anything more than a benefit to beneficiaries of long delayed adjustment applications. In other words, the plain language of the statute indicates that Congress intended to provide the alien, as a "long delayed applicant for adjustment," with the ability to change jobs if the individual's I-485 took 180 days or more to process. Section 106(c) of AC21 does not mention the rights of a subsequent employer and does not provide other employers with the ability to take over already adjudicated immigrant petitions.

Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO).[4] Based on his review, the director concluded that the MET (Asian Management Development Centre) is not accredited by the Indian official governing bodies. Therefore, it was determined that the beneficiary did not possess the requisite credentials to obtain a visa classification as an advanced degree professional because she did not have a U.S. bachelor's degree or foreign equivalent degree and 60 months of experience as required by the ETA Form 9089.

On appeal, the petitioner, submits additional evidence relating to the issue of whether the MET (Asian Development Centre) was accredited during the beneficiary's attendance. It also maintains that although it is an ex-employer, it still requests to keep the permanent job offer open to the beneficiary.

It is noted that Part H of the ETA Form 9089 at issue in this case requires that the applicant for the certified job of technical recruiter have a Bachelor's degree in the fields of Human Resources or Computer Science or Equivalent. Part H-6.A also requires that the applicant have 60 months of experience in the job offered as a technical recruiter. Part H-14 modifies this to require that the work experience must include 36 months of Technical Recruiting experience and 24 months of Programming Analysis experience. Part H 7-A also permits an alternate field of study of Engineering. There is no provision for alternate occupational experience but a foreign educational equivalent is acceptable.

Pursuant to the beneficiary's claimed academic credentials, on Part J-11-15 of her signed ETA Form 9089, she indicates that her highest level of academic achievement is a Bachelor's degree in Human Resource completed in July 1997[5] and that this was received from the MET's, Asian Management Development Centre in India.

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[4]AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.accrao.org/ register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials." In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

[5] The record shows that the beneficiary completed a three-year Bachelor of Arts at the University of Mumbai in December 1997. The beneficiary did not complete her studies at MET until 1999.

Besides the beneficiary's credential from MET's Asian Management Development Centre in India, received on October 30, 1999, the record indicates that she received a three-year Bachelor of Arts degree in Psychology from the University of Mumbai on December 12, 1997.

The record also contains an evaluation from [redacted] dated January 26, 2004, and signed by [redacted] determines that the beneficiary's three-year Bachelor's degree in Psychology represents transferable post – secondary studies to an accredited university in the United States. He further concludes that the beneficiary's 1999 post-graduate diploma from the MET's Asian Management Development Centre is the equivalent to a two-year program of post secondary academic studies in Human Resources Management and transferable to an accredited university in the U.S. [redacted] further states that the combination of the beneficiary's Indian B.A. in psychology and one year of her two-year course at the MET's Asian Management Development Centre are the U.S. equivalent of a Bachelor degree in Human Resources Management & Psychology. The beneficiary's remaining one-year from the MET's program is the U.S. equivalent of one year of graduate studies. Other than a review of the beneficiary's transcripts and diplomas, [redacted] did not specify what sources he used to evaluate the beneficiary's credentials.

United States Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[6] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991). *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability"). It is noted that the record contains no evidence that the MET's Asian Development Management Centre in India is a college or university.

It is noted that the AAO has consulted EDGE. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. "An Author's Guide to Creating AACRAO International Publications" 5-6

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[6] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

(First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

In the section related to the Indian educational system, EDGE provides that a three-year Bachelor of Science degree "The Bachelor of Arts/Bachelor of Commerce/Bachelor of Science represents attainment of a level of education comparable to two to three years of university study in the United States. Credit may be awarded on a course-by-course basis." Moreover, EDGE further states:

> The Postgraduate Diploma, following a two-year bachelor's degree, represents attainment of a level of education comparable to one year of university study in the United States. Credit may be awarded on a course-by-course basis.
>
> The Postgraduate Diploma, following a three-year bachelor's degree, represents attainment of a level of education comparable to a bachelor's degree in the United States.

The entry continues:

> Postgraduate Diplomas should be issued by an accredited university or an institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree. Rarely you may find a full time 2 year post graduate diploma.

Based on this juried opinion, we must conclude that the beneficiary's baccalaureate in this matter is only equivalent to three years of undergraduate education from a regionally accredited institution in the United States. Marks statements submitted confirm that this was a three-year program of study. Moreover, without evidence that the MET's Asian Development Management Centre is an accredited university or AICTE approved, we cannot conclude that the beneficiary's postgraduate diploma from that institution is equivalent to a U.S. baccalaureate. Regardless, as stated above, the evidence that the beneficiary has a baccalaureate must be an official academic record from a college or university. Thus, in order for the beneficiary to be eligible for the advanced professional classification sought, the petitioner must establish that the beneficiary has a four-year degree that is the foreign equivalent of a U.S. bachelor's degree.

It is noted that we have reviewed every document submitted on appeal to establish that the beneficiary's PGMBA from the MET's Asian Development Management Centre is a credential conferred by an accredited institution. Many of the documents are correspondence from AICTE to the MET discussing various programs, accreditation schedules and current status. None of the documents refer to the years 1997 to 1999 in connection with the accreditation of a PGMBA, the

beneficiary's program of study, from the MET's Asian Development Management Centre. We do not find that the evidence submitted on appeal establishes that this credential represents a Bachelor's degree in Human Resources or Computer Science or Equivalent from a college or university or even had AICTE accreditation at the time that the beneficiary received it.[7]

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as she does not have the minimum level of education required for the equivalent of an advanced degree.

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

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[7] The record contains copies of letters from the AICTE relevant to the approval of specific MET programs for specific dates, such as: a letter designating AICTE approval for one academic session of a "Masters in Computer Application" (MCA) for the period of 2001-2002; a letter referring to AICTE's approval a MET MCA program and a Postgraduate Diploma in Management (E-Business) for the period of 2007-2008; a letter designating AICTE's approval for the 2003-2004 academic year for the MET's master degree program in marketing management, financial management, and human resource & development management; and a letter from the Indian government referring to the 1994 AICTE's approval of a MET program for a pharmacy degree for the academic year of 1994-1995. None of these documents relates to the beneficiary's claimed PGMBA from the MET's Asian Development Management Centre in the year(s) 1997-1999.

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this case and relevant to other eligibility issues, it is noted that even if the beneficiary's claim to a Bachelor's degree in Human Resources or Computer Science or equivalent were recognized, which we do not accept, we do not find that the petitioner established that the beneficiary had acquired 60 months of progressive experience following her 1999 receipt of the PGMBA.[8] The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires that letters from employers must verify that the beneficiary has acquired five progressive years of post-baccalaureate experience. In this case, that experience must be split between 24 months of employment as a program analyst and 36 months as a technical recruiter. Here, the problem is the 36 months as technical recruiter. Based on the letters submitted to the record, the time accounted for ended at June 2004 with the letter from Gurus IT Services. At that point, the beneficiary had about 29 months of employment as a technical recruiter.

The AAO notes that the petitioner's 2004 corporate federal tax return shows a net income of $945,623 and net current assets of $799,516.[9] Although a letter from the petitioner, dated April 26,

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[8]An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). (AAO's *de novo* authority is well recognized by the federal courts.)

[9]Net income is shown on line 17e as the petitioner is an employer with income, credits and deductions beyond that as classified as ordinary business income shown on page 1, line 21. Net current assets are calculated from the figures shown on Schedule L. Line(s) 1 through 6 (current assets) less line(s) 16 through 18 (current liabilities) yield net current assets and represent an alternative source of cash equivalent or readily available resources to pay the proffered wage. It net current assets equal or exceed the proffered wage in a given period, USCIS will deem this sufficient to demonstrate its ability to pay the proffered wage for that period.

2006,[10] confirms its continuing ability to pay the proffered wage of $26.52 per hour ($55,161.60), it is authored by [redacted] as Manager. If a petitioner employs 100 workers or more, it may submit a letter from a financial officer of the organization. The letter fails to identify this individual as a financial officer of the organization as required by 8 C.F.R. § 204.5(g)(2). Additionally, as shown by the petitioner's 2004 corporate tax return, although the petitioner shows a net income of $945,623 and net current assets of $799,516, USCIS electronic records also reveal that the petitioner may have filed at least 1900 non-immigrant and immigrant petitions.[11] Where a petitioner files preference petitions for multiple beneficiaries, it is incumbent on the petitioner to establish its continuing financial ability to pay all proposed wage offers as of the respective priority date of each pending petition. Each petition must conform to the requirements of 8 C.F.R. § 204.5(g)(2) and be supported by pertinent financial documentation. The petitioner must establish that its ETA Form 9089 job offer to the beneficiary is a realistic one for each beneficiary that it sponsors. The petitioner failed to submit any documentation pertinent to its ability to pay multiple beneficiaries. Further, beyond 2004, we do not see any submission of federal tax returns, audited financial statements or annual reports, although the petition was filed on May 17, 2006. Based on the current record, the petitioner did not establish its continuing ability to pay the proffered wage. For these reasons, the petition may also not be approved based on the record as it currently stands.

The beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. In addition, the beneficiary does not meet the job requirements on the labor certification. The beneficiary is also not currently eligible for the classification based on the petitioner's failure to establish that she had acquired 36 months of technical recruiting employment as of the priority date of May 7, 2005. Finally, the petitioner did not establish its continuing ability to pay the proffered wage. The director's decision to revoke the petition's approval was proper. Additionally, based on

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[10] The regulation at 8 C.F.R. § 204.5(g)(2) also states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [U.S. Citizenship and Immigration Services (USCIS)].

[11] Most appear to be non-immigrant petitions.

the above-cited reasons, considered both in sum and separately, the petition is not eligible for approval.

In view of the foregoing, the AAO finds that the director properly revoked the approval of the petition. Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). In this case, the evidence contained in the record at the time the decision was rendered, warranted such denial for good and sufficient cause.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.